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Dianne Wampler 11/21/2006 12:36:04 PM From DB/Inbox: Dianne Wampler

Cable
Text:

UNCLAS SENSITIVE ANKARA 06457

SIPDIS
CX:

ACTION: ECON
INFO: CONS PA RAO FAS MGT PMA FCS POL DCM AMB

DISSEMINATION: ECON /1
CHARGE: PROG

APPROVED: ECON:TGOLDBERGER
DRAFTED: ECON:RKIMBRELL
CLEARED: ROME:BSTIRITI

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PP RUEHC RUEHRO RUEAHL RUEHIT RUEHDA
DE RUEHAK #6457/01 3241341
ZNR UUUUU ZZH
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FM AMEMBASSY ANKARA
TO RUEHC/SECSTATE WASHDC PRIORITY 9996
INFO RUEHRO/AMEMBASSY ROME PRIORITY 6601
RUEAHL/HOMELAND SECURITY CENTER WASHDC
RUEHIT/AMCONSUL ISTANBUL 1657
RUEHDA/AMCONSUL ADANA 1354

UNCLAS SECTION 01 OF 02 ANKARA 006457

SIPDIS

ROME FOR ICE ROBERT STIRITI
DHS FOR CSI - TODD HORTON, KRISTIN DUBELIER
DEPT PASS TRANSPORTATION DEPT

SENSITIVE

E.O. 12958: N/A
TAGS: [EWWT](#) [PTER](#) [ETRD](#) [KTIA](#) [TU](#)
SUBJECT: CSI IN TURKEY PRESENTS A "BINDING" IMPASSE

Ref: Ankara 4622 and previous

¶1. (U) This cable is sensitive but unclassified. Please protect accordingly.

¶2. (SBU) Summary: Two days of meeting with Foreign Trade Undersecretariat (FTU) officials in Ankara failed to find a solution to contradicting views about the legal nature of an agreement that would implement the Container Security Initiative (CSI) in Turkey. The FTU insists it needs a "binding" international agreement, while DHS has been given the authority to only negotiate "non-binding" arrangements. The diplomatic status of the CSI officials stationed in Izmir also continues as a problematic issue. At the end of the meetings, the option of modifying the existing Customs Mutual Assistance Agreement (CMAA) to incorporate CSI activities was discussed as a potential solution that might avoid an extensive ratification process on the Turkish side. Turkey's foreign trade officials remain very interested in CSI and seem intent on finding a solution, although they seem to lack expertise on the legalities of international agreements. One of the reasons why they may be so intent on turning CSI into law is to oblige other GOT agencies opposed to the program (including many in Turkish Customs) to implement it. End Summary.

LEGAL NATURE OF AGREEMENT

¶3. (SBU) Two days of meetings (November 15 and 16) with Turkish Foreign Trade (FTU) officials failed to resolve Turkey's claimed inability to implement the Container Security Initiative (CSI)

program without a "binding international agreement." According to FTU Deputy Director General for the Americas, Yuksel Akca, they consider a binding agreement to be "an international agreement," meaning one that must be approved by either the Council of Ministers or the Parliament and published in the Official Gazette. (They were not clear as to what the differences in the document would be to allow Council of Ministers versus full Parliamentary approval.) In either case, an agreement must therefore contain an "entry into force" notification procedure.

¶4. (SBU) Meanwhile, we understand from the DHS CSI General Counsel that all 32 existing CSI agreements are non-binding in that they are statements of intent to cooperate and therefore do not require subsequent ratification. CSI would apparently have to seek Circular 175 authority to negotiate the "binding" agreement sought by FTU.

DIPLOMATIC STATUS

¶5. (SBU) Another difficult issue is the diplomatic status of U.S. Customs officials stationed that would be assigned to Turkey under CSI. Initially, FTU officials told us that the GOT "will not" afford any privileges and immunities to the CSI officials. However, when we explained that we sought limited immunities that would protect the officials while performing their official duties, they conceded that this was not an unreasonable request and agreed to present this to the next inter-agency meeting they convene to discuss the program. The CMAA also provides for waiver of immunities on the request of other parties. FTU suggested that it could be possible to overcome this problem if the officials were assigned to the U.S. Consulate in Izmir, if such an entity still exists.

DRAFTING CHANGES

¶6. (SBU) In addition to these two main issues, FTU raised eight less fundamental textual points that would seem easier to address:

¶A. FTU officials want the language to reflect that reexamination in the U.S. will only occur because of additional information.

¶B. FTU officials want the implementation procedures referred to within the text of the agreement as an "Annex" or supporting document.

¶C. To provide complete reciprocity, at least on paper, FTU officials asked that the text of the agreement include the name of a U.S. port to which the GOT will have the reciprocal ability to assign personnel. They stressed that this should be a port, such as "Port Elizabeth" rather than the U.S. Customs National Targeting Center (NTC).

¶D. FTU officials want the U.S. CSI officials to share with Turkish Customs copies of regular reporting back to the United States.

¶E. FTU officials want a stipulation in the implementation procedures that neither party to the agreement will be responsible for the fees incurred in the event of a physical examination of a container. They explained that in Turkey this fee is an additional expense that is not clearly borne by the freight handler or exporter.

¶F. FTU officials want a clarification in the introduction of the implementation procedures that the risk for terrorism comes from the containerized cargo, not from the port.

¶G. FTU officials want us to specify what will be photographed in the case of a physical inspection and to remove the requirement that such action first be approved by the appropriate Turkish government official or office.

¶H. FTU officials want it to be kept in the agreement and in the implementing procedures that the GOT shall not bear any functional or personal costs of the CSI officers.

CMAA MODIFICATION

¶7. (SBU) At the end of the meetings, we discussed the notion of modifying the existing Customs Mutual Assistance Agreement (CMAA) as a possible way around the binding/non-binding impasse. CSI implementation principles could be included in the text of the CMAA, appended to it, or included in a side-letter. The FTU officials agreed to present this option at their next inter-agency meeting, and examination of the CMAA indicated that much of the language in the CSI proposed implementation procedures is already included in the CMAA.

COMMENT AND NEXT STEPS

¶8. (SBU) Comment: FTU officials emphasized that the GOT wants and continues to make preparations for CSI, but they must find a legal formula that allows them to ratify the document and put it into law. It is apparent that the FTU officials have little legal expertise regarding international treaties. Therefore, it is not abundantly clear that both sides mean the same thing when they reference a "binding" document or assert such a document is the only option available to the GOT. They are similarly uninformed about Vienna Convention related issues. At the same time, FTU officials repeatedly assert their desire to implement CSI in Turkey. One of the reasons for their insistence on such a legal agreement may to oblige other GOT agencies who are opposed to CSI (including many in Turkish Customs) to implement it. It is important that we continue the momentum created by these meetings and continue the dialogue about a solution during the coming months. Post sees the next step as being for DHS and State Department legal experts to determine the viability of either incorporating CSI into the CMAA or agreeing to a process that would allow for "entry into force" of a stand-alone CSI agreement with the Government of Turkey.
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